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SUBJECT: UNITED FARM WORKERS UNION HIGHLIGHTS PROBLEMS WITH
THE H-2A PROGRAM ON BOTH SIDES OF US/MEXICO BORDERS

REF: (A) MEXICO 2054 (B) MCKEON/CA EMAIL OF
11/24/2008 (NOTAL)

1. Summary: Mission Mexico,s Consular Section recently organized a conference in Dallas on H-2A visa processing. During this event an official of the United Farm Workers (UFW) shared with Labor Counselor (an invitee at the conference) his union,s concerns about the problems they believe exist in the H-2A visa program. When laying out these concerns the UFW official cited the details of a troubling situation involving agricultural workers from the Pacific western Mexican state of Colima and the frustrations the state governments of Arizona and Colorado have experienced in dealing with the H-2A program. In the case of Colima the UFW official said, guest workers were offered jobs in California and promised good wages, six months of regular work, free housing and low cost meals. None of these promises were kept. UFW efforts to enlist the support of GOM state and federal authorities in helping the workers obtain some form of redress for their grievances have so far been unsuccessful. With regard to Arizona, the union official indicated that the authorities there are so frustrated with the H-2A program,s perceived inability to provide needed legal labor for the state,s agro-industries that the state,s Governor contacted Labor Secretary Elaine Chao with numerous recommendations for its reorganization. Colorado is at the point of implementing its own guest worker program. The UFW official made clear that his union firmly supports the H-2A visa program. However, press reports and other documents subsequently sent to Labor Counselor underscored the UFW,s concern that few persons, businesses or government agencies on either side of the border are fully prepared to take advantage of the potential benefits the H-2A program could provide to both US agribusinesses and to unemployed or underemployed Mexican workers. End Summary

DALLAS H-2 VISA CONFERENCE

2. On October 28-29 Embassy Mexico City,s Consular Section held its &Second Annual H2 Visa Forum& with the theme of &Building a Foreign Guest Worker Force to Fill America,s Needs& (reported Ref B). One of the main goals of the forum was to facilitate citizen/government communication and free exchange of opinion and ideas between those two. Its main audience was private sector companies involved in petitioning for foreign workers from Mexico. This year, however, the Consular Section asked Mission Mexico,s Labor Counselor to

work with them to invite interested American labor unions and appropriate state and federal Mexican government representatives.

¶3. Two American labor organizations participated in the forum, the United Farm Workers (UFW), which is part of the Change To Win coalition and the Farm Labor Organizing Committee (FLOC) which is a part of the AFL-CIO. No Mexican unions participated in the forum but there were representatives or persons affiliated with the state governments of Veracruz, Jalisco, Puebla and Nuevo Leon. During the two-day event the UFW official, one of the union's National Vice Presidents, took full advantage of the forum to network with the Mexican state government representatives particularly those from Puebla and Veracruz. In the case of Puebla the UFW official arranged for subsequent meetings with the state's labor authorities. In his discussions with the Veracruz representatives the union official proposed exploring ways to send agricultural workers to harvest citrus products in Florida and coffee in Hawaii. Veracruz is a major grower of citrus produce and coffee in Mexico and has a vast pool of workers familiar with harvesting these products.

UFW CITES PROBLEMS WITH H-2,S IN US AND MEXICO

¶4. On the margins of the Dallas forum the UFW official held a series of in-depth conversations with Mission Mexico's Labor Counselor. The union official steadfastly expressed the UFW's firm support for the H-2 program but said that as

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currently implemented it was causing problems on both sides of the border. On the Mexican side of the border the UFW official cited an ongoing situation in the Pacific western state of Colima as an example of what his union saw as one of the problems of the H-2 visa program.

¶5. According to the UFW official, this past July approximately 180 agricultural laborers were recruited from Colima to work on farms in California. The workers were recruited by a relatively inexperienced labor contractor who promised them the full range of housing, meals and salary benefits as stipulated under the applicable H-2 visa provisions. For the workers the best thing they thought they had been promised was a guarantee of earning USD 100 per day and a 40 hours workweek for a period of at least six months. In order to obtain the jobs promised by the recruiter the workers were all required to pay USD 600 to cover visa processing and travel costs. Unfortunately for the Colima workers none of the promises made to them were kept.

¶6. Upon arrival in the US the laborers were reportedly placed in substandard housing, provided meals that consisted of little more than beans and were rarely, if ever, given the 40 hours of work per week they had been promised. In some cases the laborers were never offered the full-time employment they had been promised; in other instances they were reportedly not paid in full for the work they actually did. With the help of farm labor advocates such as the UFW and the California Rural Legal Assistance Foundation (CRLA) the workers have filed a suit against the recruiter to obtain the wages and benefits they were promised. Both the UFW and the CRLA have attempted to enlist the assistance of the GOM and the state government of Colima to help the workers to obtain some form of redress for their grievances. Thus far these efforts have been unsuccessful. Ultimately most of the workers returned home to Mexico, at their own expense, having earned less than the net cost of their original outlay for coming to work in the US.

¶7. In talking with Mission Labor Counselor the UFW official did not specifically blame the recruiter for what happened to the Colima workers. However, he did opine that the situation

with the Colima workers might never have happened if the H-2A visa program had more effective oversight. Such oversight, he averred, might have prevented someone like the inexperienced recruiter from ever being authorized to contract foreign laborers in the first place.

ARIZONA IS UNHAPPY WITH THE H-2 PROGRAM

¶8. At a later point the UFW official also commented on the problems in the US that state governments were having with the H-2A program and specifically mentioned the cases of Arizona and Colorado. In his conversation during the Dallas forum, and in subsequent documents forwarded to Labor Counselor, the UFW official argued that frustration with the implementation of the H-2A visa program was growing and prompting some states to take matters into their own hands. The most thoughtful example of this frustration the union official said could be seen in a letter shared with the UFW sent by Arizona Governor Janet Napolitano to US Department of Labor Secretary Elaine Chao.

¶9. In her letter dated February 2008, Governor Napolitano expressed her concerns and shared her suggestions regarding the H-2A program. Speaking as the executive of a border state with an extensive agricultural industry, Governor Napolitano decried &the Federal government,s cynical refusal to reform our immigration laws8. Continuing on, the Governor indicated that the need for agricultural laborers far outstrips the number of persons in the US willing to accept this type of work. The H-2A program, Governor Napolitano said, seemingly provides a way to obtain foreign labor to address this situation but that it has never worked and its flaws have been overlooked for years. As a result, she stated, the &H-2A program gives the appearance of offering employers a path to obtain lawful temporary agricultural workers, however the program has missed the mark so widely it is scarcely used.8

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¶10. The governor,s letter then went on to identify four areas that significantly hinder the H-2 program. The areas she cited were: (1) the mandatory requirement that employers provide worker housing (the Governor favors a housing allowance instead of housing per se which she believes would provide both employers and workers with the added flexibility needed to adapt to local conditions); (2) the involvement of four separate government agencies (state employment agencies, US DOL, State and DHS/CIS) in processing H-2 applications; (3) time and resources devoted unprofitably to individually based certifications and; (4) a wage formula that the governor said does not look honestly at the actual pay of agricultural workers in the US.

¶11. Governor Napolitano,s suggestions for improving the H-2A program include such recommendations as greater coordination between the USG and the border state governments who constantly deal with the problems created by the shortage of agricultural workers, changing the focus of current regulations to help expedite H-2A processing, ensuring a realistic balance between the needs of employers and legitimate enforcement and fraud detection requirements and having DOL turn over more authority to the states in the adjudication of H-2A applications. The governor also suggested experimenting with establishing industry-wide standards for determining labor shortages. (Note: DOL and DHS are both working on new H-2 regulations although they are not yet completed.)

UFW SEEKS COMMON GROUND WITH STATES

¶12. In commenting on Governor Napolitano,s letter the UFW

official indicated that his union generally agreed with many of Arizona's concerns. Moreover, the union official indicated that Arizona was not unique among Border States in expressing these concerns. Other states may not, as yet, have laid out their recommendations for revising the H-2 program in as detailed a fashion as Arizona but the UFW official made clear that many state governments share the view that H-2 program and the USG are not responsive to their needs.

¶13. While Arizona is attempting to work with the USG on the question of how to deal with the shortage of agricultural workers Colorado has taken a more go it alone approach. According to the UFW official, earlier this year Colorado signed into law what it is called a "state guest worker program". The stated purpose of the Colorado legislation was to "remove constraints on commerce caused by activities detrimental to Colorado's agriculture industry and to allow the Colorado Department of Labor and Employment, in cooperation with the Colorado Commissioner of Agriculture, to establish a Colorado nonimmigrant agricultural seasonal worker pilot program and to assure necessary protections for nonimmigrant and seasonal agricultural workers." Colorado's independently established guest worker program could be the shape of things to come if other border states decide to act on their own to address the problems of insufficient workers to satisfy the needs of their agro-industries. However, this pilot guest worker program does not make clear how these non-immigrants might qualify for US visas which can only be issued on the basis of DHS/CIS approved petitions.

¶14. The UFW official indicated that his union was doing everything possible to work with states like Arizona and Colorado to help them address their agricultural labor shortage needs. The UFW, he said, had its own ideas about the recommendations made by Arizona and the legislation passed by Colorado but did not see either of these state level actions as obstacles that could not be overcome through honest negotiation. A high priority for the union, the UFW, was to find a balance in the H-2 program that supported American agriculture, allowed employers to obtain the labor they needed in a timely fashion and to find a legal way to allow laborers (in this case Mexican laborers) to find the jobs they are seeking while maintaining fair labor standards.

COMMENT

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¶15. Based on the information shared with Mission Labor Counselor by the UFW there is great interest in the US in making the H-2 visa program more effective. The Border States in particular have a strong interest in making the program work since most have vibrant agribusinesses and all of them deal regularly with issues raised by migrant Mexican laborers who may or may not be in the US legally. The UFW is a good example of an American union trying to help address these issues by working with state governments on both sides of the US/Mexico border. Close USG cooperation with the UFW and similar organizations could potentially provide significant benefits to both US agribusinesses and to unemployed or underemployed Mexican workers.

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